Secrt. II-27—100,000—31-5-38.

Public (Election) (1948) Department.

MS. SERIES.

G.O. No. 3175

Dated 16 December

[Despatch Abstract.]

Elections - New Constitution - Preparation of Electoral rolls - Manuscript rolls - Inclusion of names of non-Indians - Instructions Issued - Papers Recorded.

GOVERNMENT OF MADRAS

Public (Elections) Department

Memo.No. 7425/48-3,Public(Elections),dated 14-12-1948.

Elections - New Constitution - Electoral Rolls - Preparation of manuscript rolls - Inclusion of names of non-Indian voters - Instructions-Issued.

Ref: Government Memo.No. 7428/48-1,Public(Elections) dated 1-11-1948.

In para 2 (k) of the memorandum cited, it was ordered that the writing up of the manuscript electoral roll in respect of units where there are non-Indian voters, should be deferred pending further instructions from Government with reference to the provisions of Article 5 of the Draft Constitution of India. A number of amendments to this Article have been proposed, and the Government are not sure now how this Article will finally emerge after the discussions in the Constituent Assembly; the position of non-Indians in respect of Indian Citizen-ship will not be clear until after the New Constitution has been enacted.

2. The Government, therefore, direct that the writing up of the manuscripts rolls should not be deferred on this account. But the completed enumeration forms relating to Europeans, Burmese, Ceylonese, Malayans and all other non-Indians should be kept separately now, and not taken into account when writing up the manuscript electoral rolls. These instructions apply to ALL units.

3. After the new Constitution has been enacted and the position becomes clear and final, these enumeration forms may be scrutinised, and the names of the qualified persons could then be included in the list of additions made by the Registration Officers SUO MOTU, and published along with the lists of claims and objections to the preliminary electoral rolls ander the new Electoral Law. Detailed instructions in this regard will issue in due course. The bundles referred to in para 2 above should be neatly packed and labelled "Completed enumeration forms relating to non-Indians" and arranged unit-war and stored safely,for necessary action on receipt of those instructions.

Sd. x x
Chief Secy. to Government.

To
All Collectors.

NOTE FILE. ....

p.t.o.

NOTE FILE.

Public (Elections) Department.

Elections - New Constitution - Electoral rolls - Preparation - Qualification of voters - Citizenship Qualification.

Please see the note of the P.P.S. to H.Pr. at p.11 ANTE.

2. The previous notes in this file were based on Article 5 of the Draft Constitution as originally drafted by the Drafting Committee of the Constituent Assembly. The Article has since been redrafted by the Drafting Committee. I have extracted at (B) the original draft as well as the redraft. I see from the printed notices of amendments to the Draft Constitution, that the Hon'ble Dr. Ambedkar will himself move in the Constituent Assembly for the acceptance of the redraft.

3. Legal pointed out that the correct interepretation of the Article, as originally drafted, would be difficult till the relationship between the Dominion of India and the British Commonwealth had been settled, because of the declaration in the preamble to the Constitution that India was to be a Sovereign Democratic Republic and the use of the words 'foreign State' in the Article. The use of the word 'Republic' may not, in practice, make any difference as the recent developments with regard to Eire have shown. Actually, the Drafting Committee have suggested that the preambly may be redrafted so as to substitute 'Sovereign Democratic State' for "Sovereign Democratic Republic"

4. As regards the words "foreign State", the position has now been clarified by the definition of that term which the Drafting Committee have proposed to insert in Article 303. The definition suggested is as follows:-

> "'Foreign State' means a State other than Indian, but does not include a State notified in this behalf by the President."

5. The redraft introduced some very impportant changes in the position as it appeared from the original draft.

6. It will be noticed that there is no proposal by the Drafting Committee to amend or modify in any way article 6 of the Draft Consitution under which "Parliament may, by law, make further provision regarding the acquisition and termination of citizenship and all other matters relating thereto." It is presumably under this Article that an elaborate Citizenship Law, like the British Nationality Act, 1948 will be enacted by our Parliament in due course. But till such a Law is passed, we shall have to be guided by the provisions of Article 5.

7. Important charges made under the redraft are:-

(1) Only "Voluntary" acquisition of the citizenship of any foreign State will exclude citizenship of India;

(2) ALL COUNTRIES OUTSIDE the Dominion of India, that is ~~ALL~~ all outside countries including Pakistan, Ceylon, Burma, Malaya, the United Kingdom, Eire, have been put on the same footing in regard to the acquisition of Indian citizenship

Presumably, if a country is notified in that behalf under the definition of foreign State referred to above, it will not be a foreign State for the purpose of the Article, and there will be the possibility of double citizenship, i.e., of persons being citizens of both India and the other country. Presumably, this notification will issue in respect of countries with whom satisfactory reciprocal arrangements regarding citizenship have been entered into by India.

(3) he has not taken up his fixed habitation after 1-4-47 in any territory outside India.

/(3) is, of course, implied in the domicile qualification./

(b) A person will have his domicile in India in the following classes of cases:-

Section 7 of the Indian Succession Act.(p.200 of Book 11).

(i) IF HIS DOMICILE OF ORIGIN IS IN INDIA, i.e., if he is a person of legitimate birth, his father was domiciled in India at the time of his birth, or, if he is a posthumous child, his deceased father was domiciled in India at the time when he died.

p.200 of Book No. 11

If the person was an illegitimate issue, if at the time of his birth, his mother was domiciled in India-- (Section 8 of the Indian Succession Act.)

p.200 of Book No.11

/(ii) If his domicile of origin is not in India, he has acquired domicile in India by taking up his fixed habitation here (sec. 10 of the Indian Succession Act.)

pp.20-21 of Book No.11.

(iii) if he has acquired his domicile in the Dominion of India by filling a declaration under section 11 of the Indian Succession Act, i.e., by filling the requisite declaration of his desire to acquire such domicile after residence in India for not less than one year immediately preceding the time of his making the declaration.

p.299 of Book.No.11.

(iv) if he would have acquired domicile in India under the above mentioned provisions of the Indian Succession Act, but for his being a Hindu, Muhammadan, Buddish, Sikh or Jaina- Vide section 4 of the Indian Succession Act, and the explanation under Article 5 (1) of the redraft.

(v) if he has 'migrated' to India from any country outside it, including Pakistan, Ceylon, Burma, Malaya, South Africa, etc., i.e., by which is presumably meant, that he has come to India for good, that is, with the intention of permanently staying in India, and taken steps accordingly provided that before the commencement of the New Constitution he deposits in the office of the District Magistrate (before the Chief Presidency Magistrate in the Presidency-towns) a declaration in writing of his desire to acquire such domicile and has resided in India for AT LEAST ONE MONTH before the date of the declaration.

(5) (a) The only existing law on the subject on acqusition of domicile seems to be Part II of the Indian Succession Act, and this special concession for acquisition of domicile in the case of persons who have migrated to India can be availed of only if the declaration is filed before the date of commencement of the New Constitution and the persons has resided in India for not less than one month.

The word 'migration' will presumably cover not only refugees from Pakistan and persons repatriated from South Africa or other countries, but also any other persons who have come into India for good from any other country.

The concession of residence for one month would really have been intended and could be justified only in hard cases like those of refugees from Pakistan and Indians repatriated from South Africa or any other countries. It is not, therefore, clear why the concession has been allowed to any person who has MIGRATED to India from any country whatsoever.

p.t.o

The requirements of residence for at least one year laid down in section 11 of the Indian Succession Act can hardly be excessive, if anything the period could reasonably be increased except in hard cases of the kind referred to above.

11. Notice of a number of amendments to Article 5 have been given and we cannot be sure now how this Article will finally emerge after the discussions in the Constituent Assembly.

12. I have prepared this note after discussion with the Joint Secretary, Legal (in the absence of the Legal Secretary on tour).

Sd. x x 8/12/48
9-12-48.
Addl.Secy.,Public.

For orders on the suggestion at B above.
Sd. x x
9/12/48.

H.Pr. Sd. O.P.R. 10/12.

H.M.(Fin.) Sd. B.G.R. 13/12.

Draft to me atonce. with reference to B above.

Must go to-day.
Sd. x x x
13-12-48.

Orders on p. 22 ante.

A draft Memo. is submitted for approval.

Sd. x x
13/12-

Revised draft below.Issue atonce.
Sd. x x14/12.
Addl.Secy.

After issue:

I. We shall see whether further action can be taken in this case on 1-3-49. Enter in the Call Book accordingly.
S.d x x x 14/12.

II. See p. 14 ante. Return the British Nationality Bill to Legal.
Sd. x x
14/12.

(Issued as Memo. No.7425/48-3, Public(Elections), dated 14-12-1948).

With reference to A above, the British Nationality Bill has been returned to Legal separately.

2. The papers may be recorded in a G.O. for facility of future reference and a C.B. entry made against 1-3-49 as ordered at B above.

Sd. x x
16/12-48.

G.O.Ms.No. 3175,dt.16-12-1948.

Elections - New Constitution - Preparation of Electoral Rolls - Manuscript rolls - Inclusion of names of non-Indians - Instructions issued - Papers Recorded.

C.B. Entry made against No. 14,dt. 20-12-48.

/True copy/

Office Assistant,
Madras Record Office.

PSR. 27-x-53.

27.10.